HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Industry, Science and Technology

INDU • NUMBER 115 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Friday, May 11, 2018

Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

Friday, May 11, 2018

● (1900)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome, everybody, to the last of the open-mike sessions.

We started off in Halifax. We went to Montreal, Toronto, Winnipeg, and Vancouver. We did the road trip because we know this is a fairly lengthy study, and going to these cities gives us the opportunity to see people who would not normally come to Ottawa. This is really important. Having the open-mike sessions gives everybody an opportunity to say their piece.

We have eight people. My golden rule is that if there are fewer than 10 people, you each get an extra minute, so you get three minutes. Are we happy about that? Do I get a cheer? If there are more than 10 people, you get two minutes. Right now it looks like there are fewer than 10.

I'm going to call you up and you'll get the microphone. You'll get three minutes to say your piece. I would recommend that whatever you're passionate about, just come right out and get that on record. That's what's important to us, so if there is a recommendation, if there is a thought, or if there is something that's really bugging you, this is the time to get it on record.

Fifteen seconds before your three minutes I'm going to put my hand up. That means you have 15 seconds left. Then at the end of three minutes if you're still talking I'm going to cut your mike off, in a nice way, of course. We just want to be fair with everybody.

We're going to start off with Mr. Devon Cooke.

Mr. Devon Cooke (Documentary Filmmaker, As an Individual): Good evening.

You already know my name is Devon Cooke. I am a Documentary Filmmaker and tonight I'm asking you to consider creating a positive right to quote for audio and visual media.

In print, it's perfectly natural to quote other written sources with attribution. A politician's words, a line of poetry, a fact from a scientist—all of these can reinforce the written word. It's part of the medium. What I'm asking is that the same quoting be considered part of the mediums of audio and video.

As a documentary filmmaker, it's my job to represent reality on video. To do that I need to use sources beyond just the camera I hold. I can't show every point of view with just my camera. I need to use other sources. In these days, the reality is, it's on YouTube, it's on CBC, and it's in all sorts of visual media, so I need to use other people's footage to do my job. I can't represent reality if I have to get permission for every clip, or if I have to spend thousands of dollars a minute to clear it through CBC and all their team of lawyers and all that.

The mechanism for doing this is fair dealing, but I can't use fair dealing with the law, as written, because I don't know if what I'm doing is fair until I go to court. My lawyer and my insurance company say that this is too late—if I'm in court, I've already lost—so if I want insurance, which my broadcasters require me to have, I can't rely on fair dealing.

With that in mind I would love the committee to consider recommending creating a bright line right to quote in audio and visual media. There should not be a question that I have the right to use other footage to represent reality, this is my job.

I should not have to ask permission to accurately represent what others have said in my medium. I shouldn't have to ask film companies, I shouldn't have to ask celebrities, I shouldn't have to ask the government, and I certainly shouldn't have to ask my insurance agents.

So, please consider making a right to quote a positive bright line part of copyright, so there is no question I am allowed to use fair dealing in the course of my work.

Thank you.

● (1905)

The Chair: Thank you very much.

I should remind everybody, too, that everything is being recorded so it will be on record.

Number two is Susan Paterson, please.

Ms. Susan Paterson (As an Individual): My name is Susan Paterson. I'm the government publications librarian at the University of British Columbia. I'm here today speaking as a private citizen and not behalf of my employer.

I'd like to ask the committee to formally review section 12 of the act pertaining to crown copyright. This is an antiquated provision that serves no justifiable purpose in today's information ecosystem. Furthermore, crown copyright creates barriers to the use and reuse of government information. These statements are based on evidence from my own professional work and from working with government information librarians and other professional colleagues across Canada for many years.

In addition, Canadians from across the country and representing multiple sectors signed a petition asking for copyright protection to be removed from government works once they are made available to the public. This petition was tabled in the House of Commons on October 20, 2017. The petitioner was Amanda Wakaruk, the copyright librarian at the University of Alberta. She was unable to attend this session but I encourage you to visit her site, fixcrowncopyright.ca, or reach out to her for more information.

First, there is no justification for the existence of crown copyright. Since it is government information, it is protected by the Access to Information Act and multiple governments have claimed to support open government and open access. However, crown copyright is antithetical to these open commitments. In addition, and after almost two years of open government initiatives, an overly restrictive open government licence has been applied to a mere 279 federal government publications out of potentially 500,000 or more legacy publications.

Second, crown copyright is creating very real barriers to the use and reuse of governments works. In practice, librarians are unable to preserve and provide access to digital versions of government publications without first asking permission. As a result, many publications were deleted and subsequently lost as part of the 2012 overhaul of government websites.

Third, the provinces look to federal legislation and programs for guidance in creating their own copyright policies. Having leadership at the federal level would help these other jurisdictions. For example, here in British Columbia, the B.C. intellectual property program requires that all potential users apply for, and receive, permission for any reproduction of a work even for non-commercial purposes. The province does not even include a statement in the copyright notice regarding personal or non-commercial use of work.

In closing, when the government invests public money in a report that's made publicly available, it seems against the public interest that the government might later restrict access to the report under this current crown copyright law.

Thank you.

● (1910)

The Chair: Thank you very much.

We're going to go to George Opacic.

Mr. George Opacic (As an Individual): Thank you very much for allowing this open-mike session.

I very much endorse the presentations earlier today by Rowland Lorimer, Kevin Williams, and in particular Jerry Thompson. The Federation of BC Writers, which I represent, has the interests of literary artists very much at stake. There is some agreement with prior presenters, but there's also some disagreement.

We support the positions of Access Copyright, particularly with respect to fair dealing. This concept has been used inappropriately recently, determined on more than one occasion, as you well know, by decisions of the Federal Court and elsewhere as an excuse to make free copies of creative works without rational bonds. The purely financial reasons driving the initiatives of academic institutions have callously bypassed the intent of the fair dealing exclusion to copyright protection.

As was very well stated by Jerry Thompson, the vast majority of the authors represented by the federation are poorly paid for their contributions even before one arrives at the question of being paid for the copying of their work. Seeing large institutions arbitrarily use their creative works without payment or recognition does not appear to be fair in the least, particularly when those institutions have budgets in the hundreds of millions and they use their legal budgets against us.

We are composed of a disparate and powerless assembly, being taken advantage of individually in situations of gross economic disadvantage. This in itself calls for regulation by government of behalf of those individuals.

Just as important, the unique culture of our country is at risk. The committee has heard elsewhere, and we loudly repeat it here, if Canadian authors have no financial incentive to write of their Canadian experiences from the Canadian perspective, then there will be no such creative works made. Without that unique understanding, the view of our communities and the interactions of our people will no longer be heard, and Canadian culture will be a minor footnote in the history of the world written by a more dominant culture.

Another factor I will briefly touch on is copyright ownership. The act needs an overhaul, as so many speakers before this committee have said. The question is, what is the strategic goal of the Copyright Act? Is it a grossly financial instrument for monetizing the setting down of ideas or should there be a real vision? Should the act not be an enabler of further creation rather than providing for an affixing of dollar signs?

To answer those and several other questions, we strongly advocate for funds to be allocated for a study to take place over the next few years in preparation for the next major rewrite of the act. We would like such a study to determine the actual situation of the beneficiaries and users of the provisions of the act. We have a specific list of questions that could be the basis of a study, and we certainly want to contribute in any way we can.

Thank you.

The Chair: Thank you.

Next, we have Christina de Castell.

Ms. Christina de Castell (Chief Librarian, Vancouver Public Library, As an Individual): Thank you for the opportunity to speak. I'm Christina de Castell. I'm the Acting Chief Librarian at Vancouver Public Library.

I'd like to speak to you today about how the digital landscape has changed public libraries and the way that the Copyright Act supports this transformation.

Our library spends $5 million annually on books and materials for loan. We buy about 80% of Canadian publications. We buy most of those in multiple copies, in digital and print form. We spend about 30% of this $5 million on digital content including e-books, research databases, streaming film, and learning tools. The vast majority of this content is licensed on an annual basis. We rebuy the same content from the same suppliers every year. This is typical of urban public libraries in Canada.

Self-publishing in the e-book format is dramatically changing the e-book market. In 2017, we launched a self-published author collection. We bought more than 200 titles directly from Vancouver area authors. Overall, about 25% of use at Vancouver Public Library is of digital content. Its use is growing by about 20% per year in many libraries, although the commercial market for e-books has stalled.

Public library users relying on this digital content may be unable to make use of the fair dealing exceptions because of restrictions that are placed on licences from library suppliers. Libraries may be unable to make use of exceptions on behalf of patrons or for interlibrary loan or preservation for the same reason. Licences override exceptions that are provided within our Copyright Act. Licence terms are complex, varied, and difficult for non-lawyers to interpret.

Protecting copyright exceptions from being taken away by licences, as the U.K. and Ireland—among others—have done, would address this problem. This would provide clarity for libraries and their users.

Libraries like ours are also supporting authors and the creation of new content. We deliver thousands of programs annually that support reading and creativity. Teaching digital creation is an important part of our programming. We do this through our lab with recording studios and computers with specialized software. We offered resources to more than 10,000 creators last year. The non-commercial user-generated content exception at section 29.21 supports this type of learning environment, as does the copyright term of life plus 50 years that ensures a robust public domain.

Finally, I'd like to emphasize the continued importance of fair dealing exceptions in public libraries. Many of our visitors are in circumstances where they cannot afford to buy books that they need to understand health concerns, learn about Canadian culture, explore new careers, or support their children's education.

The ability to make copies under the fair dealing exceptions for research and private study, particularly, are vital to the activities that happen in public libraries to help all our members of our community to reach their full potential.

Thank you.

● (1915)

The Chair: Thank you very much.

Next is Mr. Noah Berson.

Mr. Noah Berson (Student, Capilano University, As an Individual): Good evening, Mr. Chair, committee members, fellow witnesses, and others watching. Thank you for taking the time to come out to the west coast. We appreciate it, especially on such a lovely day.

It's not often that I get to stand in front of MPs and lobby for the status quo. This is kind of exciting. I'm a poli-sci student from Capilano University in North Vancouver. I'm also the VP external at the student union there.

You said just come out and say it, so I'm going to come out with it. It is imperative that we keep fair dealing in the Copyright Act.

I can go through all my nuance and facts. I can also just speak from personal experience. I've had peers and classmates who go through and textbooks are continually quoted as one of the biggest barriers to education when I talk to folks. Removing fair dealing just adds a further barrier.

It's my role in student government and it's your role in the real government to reduce barriers to public sector education. Removing fair dealing just increases those barriers.

I've heard folks talk about the fact that this will lead to a reduction in Canadian content. There's a remarkably easy solution that prevents that. Open educational resources, OERs, are front-loaded textbooks, we'll call them. They're textbooks that are available for free to professors and to students, in a way that the government prefunds them. We pay in advance for the research. We send out tenders. B.C. recently had an $18-million open educational resources test pilot. That was absolutely incredible. It provides textbooks to professors and to students without actually putting the burden on them, while still creating that rich Canadian content.

A survey done recently in B.C. said that 30% of students actually got a lower grade in their classes because they couldn't afford their textbooks. I don't need to preach to you folks about how much more expensive education is getting. We can't increase, we can't keep adding that load onto students' backs.

In closing, we really do need to make sure Canadian institutions stay competitive. We need to make sure that folks are getting in the classrooms the most up-to-date information. We need to make sure that the schools stay affordable.

Thank you.

The Chair: Thank you very much.

Next we have Dusty Kelly.

Ms. Dusty Kelly (As an Individual): Hi, my name is Dusty Kelly. I'm a secretary and business agent for the Vancouver Musicians' Association. We represent about 1,951 musicians here in Vancouver, and we're part of the Canadian Federation of Musicians, which represents about 17,000 professional musicians across Canada.

To make a living as a musician is getting harder and harder, and part of that results from digital theft and exploitation of works through file-sharing, social media, etc. While the Internet giants are reaping billions of dollars, musicians, whose works are being shared constantly on those streams, don't see any piece of that money. The royalty structures need an overhaul to accommodate how electronic streaming revenues are derived and what portion of these revenues would flow back to the musicians that we represent. Intellectual property needs to be protected, and individuals need to be fairly compensated for their creations.

I think the promotion of the economics of creativity is really important as well. So much work has been done on the film and television end of things about understanding the notion that exploiting work for free has an impact on the economics of everybody involved. This work needs to start happening for the musicians and performers as well.

We should also recognize the difference in types of recordings. Technology change is moving rapidly, and whereas once we had compact discs, we now have media sticks or cloud-based technologies. We'd like to see you do something about protecting how performances and musicians' works are going through those mediums, and how they can get a revenue stream from that, so that they can continue to work and make a living as artists.

Thanks.

● (1920)

The Chair: Thank you very much.

Next we have Michael Jowarski.

Mr. Michal Jaworski (Lawyer, Partner, Clark Wilson LLP, As an Individual): Mr. Chair and committee members, I'm here in a personal capacity. I'm a lawyer, but please don't hold that against me. I represent various higher educational institutions, but I'm here in my own personal capacity, although I'm using my experience as previous in-house counsel and now external counsel. I'm going to do something uncharacteristic of somebody in the legal profession and speak briefly and get to the point.

I've heard monitoring talked about a lot, as well as enforcement of the law and the role that higher education institutions or learning institutions have in surveillance. Let's not mince words: surveillance is what we're talking about here. That's an important distinction, and my request to you is just one thing. When you're talking about higher education and K to 12, consider the message that it sends to have the institution surveil all the students and faculty members. When you're thinking about higher education in particular, you should look into academic freedom. I'm now looking at your analysts. Really understand academic freedom and understand what it means for a higher education institution. As a committee member, Lloyd has mentioned that witnesses are asked why they don't monitor or surveil and they explain why they're nervous. You should understand that reaction because therein lies the answer.

You're asking a huge question that cuts to the core of what the academy is about. If you don't understand that and you impose obligations to monitor, surveil, and enforce the law.... What employer has the obligation to enforce the law against their employees? Law enforcement is a matter of Parliament. You're doing something potentially dangerous, trying to be useful, but beware of unintended consequences. You're cutting to the core of a very important cultural institution.

I'll leave it at that. Thank you.

The Chair: Thank you very much.

Next we have Michael Serebriakov.

Mr. Michael Serebriakov (As an Individual): Over the course of this last week, we've heard a lot of testimony that seems to colour the discussion, not so much as a balancing of interests, but as a battle between users and creators.

For instance, earlier today, we've heard from Mr. Lorimer of the Canadian Association of Learned Journals, and he shared with us a very colourful comparison, saying that we can provide all sorts of resources to students for the price of a single case of beer.

What I think this analogy misses is that a lot of the content that we may copy has actually already been paid for by us, for instance, through licences. The analogy quickly becomes more akin to buying that case of beer and then having to pay the exact same price for drinking a single bottle from that case. Not to mention the fact that if we do remove the fair dealing exception, the educational context, we're removing it for all sorts of content. For example, sometimes we would like to share with our students a small portion of a larger work for which the publisher has set an unreasonably high price. So if you permit me to stretch the metaphor even further, I don't think it would be an efficient use of public funds to buy an entire case of wine when all you need is a single bottle, or worse yet, to deprive students of such a fine beverage.

Thank you.

● (1925)

The Chair: Thank you very much.

Our final speaker is Kim Nayyer. Welcome back.

Ms. Kim Nayyer (As an Individual): I'm coming back to you with my University of Victoria hat on. I'm associate university librarian at the University of Victoria and head of the law library.

I thought it might prudent to just clarify a little bit about our experience with our decision to exit the Access Copyright blanket licence, which I think was in about 2013. In our experience, and I think this might mirror some other universities, as well, or other colleges, we had been thinking about doing this for quite some years prior to the Copyright Modernization Act and the legislative changes of 2012, and even prior to the Supreme Court decisions that came out that same year.

What we were finding was that many of our reproductions that we were using were actually already open access or already included from licensed databases. We do continue to buy quite a number of Canadian books. We have, at the University of Victoria, what is called an approval plan where books come in automatically if they meet certain criteria. There's an entire approval plan dedicated to Canadian authors, publications. Those come in automatically; we don't even bother selecting them.

It was our experience that the tariff, the blanket licence, was not actually matching what we were reproducing. The other issue that we were finding was it was very hard to discover what, in fact, was covered by the Access Copyright repertoire. For the time that was involved there, we realized, we would probably be just as fine seeking permissions and paying for those permissions when needed or buying books generally.

I don't know if I have any more time, but I just wanted to also, wearing my University of Victoria hat, talk about the public domain laws that I mentioned earlier.

One example of things that we can do with that would have been to digitize the laws of a particular jurisdiction and make them available publicly. We were not able to do that because of the fees associated with getting permissions. However, a private company in the United States was able to afford that and they have made those laws available through a licensed database. These are the kinds of things that we would love to be able to do. I know many entrepreneurs who are just looking for data to absorb so that they can work in the legal technology area and create tools and resources to make use of primary law once it's publicly available and publicly accessible without restriction.

Thank you.

The Chair: Thank you very much.

We have come to the end of our five-day, five-city tour. We've bonded, we've made friends.

Seriously, we know this is going to be a long study because there are so many components to this. I believe the merit of any good committee is to be able to ask hard questions. It's not for us to judge the questions or the answers. It's for us to be able to ask those questions of whoever is sitting in front of us. Ultimately, it's about getting things on record. If it's not on record, then it doesn't go in the report. If it doesn't go in the report, we can't debate it with the rest of our colleagues, and I think, ultimately, people lose out on that. Whether it be creators or users, it's about sometimes asking those hard questions.

So follow along. Go to our website, INDU. You'll be able to see the evidence. You can also submit a brief of not more than 2,000 words. I assure you everything that gets submitted will be read and be a part of this study. We have some really good analysts at our disposal.

On that note, I want to thank you all for coming. It's not an easy to thing to stand up and bare your soul to us.

Thank you again, and we are adjourned.

Published under the authority of the Speaker of the House of Commons

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: http://www.ourcommons.ca

Publié en conformité de l'autorité du Président de la Chambre des communes

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : http://www.noscommunes.ca